

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

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ED MOLONEY AND ANTHONY MCINTYRE,	:	
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Plaintiffs,	:	
	:	
- vs. -	:	
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ERIC H. HOLDER, JR., ATTORNEY GENERAL OF	:	
THE UNITED STATES,	:	
	:	
	:	
Defendant.	:	
	:	
	:	
	X	

**AFFIDAVIT OF ED MOLONEY**

I, Ed Moloney, declare the following to be true and correct under penalty of perjury:

1) I am a journalist, writer and film-maker. I was Northern Editor of the *Irish Times* and subsequently Northern editor of the *Sunday Tribune*, both leading newspapers based in Dublin. I am also the author of several books about the political conflict in Northern Ireland. I now live and work in New York City.

2) I make this affidavit in support of my Complaint for Judicial Review under the Administrative Procedures Act, and for a Declaratory Judgment, a Writ of Mandamus and Injunctive Relief, and I further incorporate by reference the

Affidavit of Ed Moloney filed in support of the Motion of the Trustees of Boston College to Quash Subpoenas in Case Number 11-mc-91078.

3) From 2001 until 2006 I was the director of the Belfast oral history project (the “Belfast Project”), sponsored by Boston College, which was a project dedicated to collecting the life stories of protagonists involved in both paramilitary and security forces during the “Troubles” period of conflict in Northern Ireland from 1969 onwards.

4) There is no doubt in my mind that if any of the oral history archives of the Belfast Project at Boston College are handed over to the Police Service of Northern Ireland (“PSNI”), and if criminal charges ensue, in my opinion, the peace process in Northern Ireland will incur destabilizing and irreparable damage and, as a result, the vital foreign policy interests of the United States in that region will be undermined. In addition to my participation in the Belfast Project, my opinion is based on my lengthy experience as a reporter covering the Troubles in Ireland for the *Irish Times*, as well covering for the *Sunday Tribune* the peace process from its inception in the 1990’s through to its successful culmination. My book *A Secret History of the IRA* is regarded widely as the most authoritative account of how and why the Irish Republican Army (“IRA”) took the path of the peace process.

5) In my opinion, criminal charges against some of those who were the architects of the IRA's move into conventional politics and away from terrorism

may follow if the Tapes (as defined in the Complaint) are handed over to the PSNI. This would, therefore, be fundamentally inimical to the interests of the United States. I am strongly of the opinion that both the United States Attorney General and the Secretary of State for Northern Ireland and/or the U.K. Home Secretary should have taken these issues into account, as I am informed by my attorneys is required by the US-UK Mutual Legal Assistance Treaty, before the subpoenas at the heart of this case were issued, and that their failure to do so will have destabilizing repercussions.

6) The involvement of the United States in the peace process began in earnest during the presidency of William J. Clinton and the U.S. has supported the peace process during every White House administration since then. The interest of the United States in the peace process has been multi-layered, ranging from the prestige and validation of core values that derive from peace-making, the precedent it could set in other troubled parts of the world and the fact that peace in Northern Ireland would free up thousands of British soldiers to assist and serve beside the U.S. military elsewhere in the world, such as Iraq and Afghanistan. The United States has much at stake in assuring the continued healthy survival of the peace process in Northern Ireland, a fact acknowledged throughout the governmental system, by the media and in academic circles.

7) From my reportage of the peace process, I can assert that it was U.S. support for pro-peace process elements in the leadership of the IRA and its political wing, Sinn Féin, that effectively made the process possible. It follows that if criminal charges are made possible by the enforcement of the subpoenas, and implicitly endorsed by the Obama administration in Washington, and if this leads to the indictment of key figures in the Irish republican peace camp, the damage to them, the cause they lead, and to the peace process in general will be disproportionately greater than any law enforcement benefit which the PSNI could possibly derive from the prosecution of a 40 year old criminal allegation that, even then, the PSNI's precursor agency did not see fit to investigate.

8) This view was expressed recently by Niall O'Dowd, an Irish-American newspaper publisher who was a leader of Americans for a New Irish Agenda which conducted shuttle diplomacy between the White House and the IRA/Sinn Féin at a critical period in the peace process. He led an Irish American peace delegation to Northern Ireland after President Clinton was elected, which helped secure an IRA ceasefire<sup>1</sup>. He wrote recently:

*"President Obama's administration is damaging the still fragile Irish peace process. Federal prosecutors acting for the British won a major victory on Friday when Judge William Young ordered Boston College to turn over the transcripts. Strange as it may seem the tapes have the potential to damage the peace process."*

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<sup>1</sup> See *Daring Diplomacy: Clinton's Secret Search for Peace in Ireland*, 1997, Conor O'Clery.

*The British security forces MI5 etc., are looking for any dirt they can find on Sinn Féin leader Gerry Adams among others on those tapes.*

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*Assistant US Attorney John McNeil, praised the judge. He said the ruling indicates that ‘the US government’s obligation [under the treaty with Britain and] the public interest in this criminal inquiry are compelling.’*

*Which is load of nonsense. People have buried the past and got on with the future in Northern Ireland and created a model of conflict resolution that is the envy of the world.*

*The Obama administration and the British security hawks are doing their damndest to bring that down.....That’s what is at stake at Boston College.”<sup>2</sup>*

9) Implicit in the new arrangements put in place under the terms of the Good Friday Agreement was the idea that a line was to be drawn under the past. Sentenced political prisoners were released and a *de facto* amnesty granted to those sought by the security authorities. While those who violently opposed the new order after the signing of the Good Friday Agreement were still pursued and prosecuted, there was a clear understanding that former IRA members who supported the peace process would not be prosecuted. If charges are now brought against such figures, especially those who helped lead the peace camp, the damage to their status and authority will be such as to undermine the peace process itself.

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<sup>2</sup> *Irish Central*, [www.irishcentral.com](http://www.irishcentral.com), Sunday December 18, 2011: “Why is President Obama trying to damage the Irish peace process? Feds working with British agents win access to Boston College IRA tapes.”

10) A power-sharing government now sits in Belfast but it is not much more than two years old and its roots are thin and shallow. The two principal parties, one pro-British, the other the IRA's political wing Sinn Féin, were until recently mortal enemies and suspicion and distrust still characterize their relationships. To placate their confused supporters and to fend off destructive tendencies in each party, their respective leaderships depict the other party's participation in government as a signal of their opponents' defeat and their own party's victory. It makes for an uneasy and potentially fragile form of government. Indeed, the Northern Ireland Assembly has been suspended four times since its inception in 1998, as a result of fundamental disagreements between the leading pro-British parties (the Democratic Unionist Party and the Ulster Unionist Party) and Sinn Féin, the largest nationalist party. Unionists had refused to participate in the Good Friday Agreement's institutions alongside Sinn Féin until they were assured that the IRA had discontinued its activities, decommissioned its arms and disbanded. Accordingly, even without the provocation that will result from any prosecution pursuant to the subpoenas, the peace process remains fragile.

11) Open conflict between members of the governing parties most often emerges over the question of who is to blame for past individual acts of violence and these conflicts can act as a proxy for the underlying deeper

quarrel. If the subpoenas are enforced, it would have the potential to bring this latent conflict violently to the surface and to break apart the power sharing government and with it the peace process. If charges are brought against architects of the peace process, then Unionists will find it very difficult to share power with Sinn Féin, the IRA's political wing. The Attorney General has made no assessment of these circumstances which, as I am informed by my attorneys, he was obliged to do under the terms of the US-UK MLAT before the issuance of the subpoenas. The Attorney General has not brought any these concerns to the Court's attention. The only way to avoid such an outcome is for the Court to enjoin the enforcement of the subpoenas until such time as the Attorney General has complied with his obligations under the US-UK MLAT.

12) At another level, dissident opponents of the pro-peace party within the IRA broke off to form a violent opposition to the new arrangements and oppose the power-sharing government with bomb and bullet. They will find only hope and comfort if the oral history tapes are handed over to the PSNI, especially if criminal charges follow. They will trumpet this as evidence of the naivety and foolishness of the pro-peace leadership of the mainstream IRA in accepting British assurances of an amnesty, while disappointment, anger and frustration amongst mainstream

IRA supporters will surely lead to a boost in dissident recruitment and violence which will all add to the destructive pressures on the peace process.

13) It is my firm opinion that any material produced pursuant to the Boston College subpoenas will open up a hornets' nest which, if kicked, will let loose a horde of vicious insects to do irreparable harm to the peace process in Northern Ireland and mortally damage a foreign policy initiative in large measure made possible by the United States and conducted in the foreign policy interests of the United States.

14) It is incumbent on the Attorney General under the US-UK MLAT to assess the effect of the issuance of these subpoenas on the peace process, and to so advise the Court. His failure to do so has placed a fragile peace in serious jeopardy. Accordingly, I pray the Court to remand this matter to the Attorney General to conduct a proper review of the aforementioned dangers, in accordance with his obligations and the requirements of the US-UK MLAT, or in the alternative to grant the declaratory judgments and/or injunctive relief requested.

Dated: December 29, 2011  
Bronx, New York

/s/ Ed Moloney  
Ed Moloney